CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY

MEMBER AGENCIES

Central Contra Costa County

Town of Danville

City of Lafayette

Town of Moraga

City of Orinda

City of Walnut Creek

November 13, 2008

RECEIVED
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CITY OF LAFAYETTE

Steven Falk, City Manager
Mala Subramanian, City Attorney
City of Lafayette
3675 Mt. Diablo Blvd., #210
Lafayette, CA 94549

Dear Mr. Falk & Ms. Subramanian

The CCCSWA Board of Directors has directed staff to pursue CCCSWA designation as a "regional agency." The purpose for seeking regional agency designation is to simplify AB 939 annual reporting to the California Integrated Waste Management Board (CIWMB).

Designation as a regional agency is important because the CIWMB allows regional agencies to submit one regional diversion report on behalf of the entire region. Currently, the Authority staff must prepare five reports to the CIWMB each year for our cities and towns. Having to complete only one report for the Authority in the future will save time and allow staff to focus on diversion programs. Although CCCSWA staff will submit a single regional report to CIWMB, disposal and diversion statistics will still be recorded and monitored for each jurisdiction to measure program effectiveness.

In addition to the single regional report, there are other advantages to regional agency designation. CCCSWA designation as a regional agency is especially appropriate since CCCSWA has historically implemented and managed all of the agency's waste reduction and recycling programs regionally. Additionally, regional reporting increases accuracy by reducing the effects of disposal misallocation and by reporting for a larger geographic area. Also, by averaging our diversion statistics, a member agency who has a large commercial base that is recycling can share its success with members who have small commercial sectors. Conversely, a member agency whose household diversion statistics are high will share their success in areas that have a large number of multiple family households that are difficult places to engender successful recycling programs.

Regional agency designation <u>does not</u> change existing CCCSWA member responsibilities, functions, or relationships established in the Authority's existing JPA agreement. Regional agency status means only that waste reduction and recycling programs will be implemented and managed regionally (which CCCSWA already does) and that annual diversion rates will be reported to the CIWMB as a region.

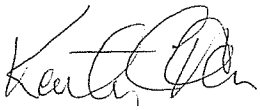
CIWMB legal staff has assisted CCCSWA counsel in drafting the attached Addendum to the existing Amended Joint Exercise of Powers Agreement (JPA) to authorize regional agency designation. The CIWMB requires each member jurisdiction that will join regional agency to acknowledge its intent to do so. Staff has also drafted the attached resolution for the cities to use for this purpose, although the cities are free to use some other method of indicating their intent to join, such as a minute order.

At their last meeting, CCCSWA board members directed staff to forward copies of the Addendum, resolution, and other supporting documents to their city managers and attorneys for review, comment, and endorsement. CCCSWA staff requests that you review the attached documents and forward any comments or questions to Bart Carr, Senior Program Manager, at 925.906.1801 ext. 104, or Kent Alm, CCCSWA Counsel, at 510.808.2081.

We would very much appreciate it if you could contact staff before the Thanksgiving break to let us know your city's general position on this matter and how soon you think it might be possible to get a decision from your Council or Board. We hope to bring this issue to the Authority Board at their December 11, 2008 meeting, with the goal of having regional agency designation in time for 2009. If you cannot get approval before that date, the Authority may be able to approve the Addendum to the JPA on December 11 on the condition of receiving approval from one or more agencies.

Finally, please accept our apologies for the short time frame this request entails. If we can obtain your agreement to this request and forward documentation to the State before the New Year, we will be able to prepare just one regional report to the CIWMB beginning in the 2009 reporting year. Accordingly, your attention to this request is very much appreciated.

Sincerely,



Paul Morsen
Executive Director

Kenton Alm
Legal Counsel

Attachments:

1. Comments and Questions Regarding Regional Agency Designation
2. JPA Addendum Establishing regional Agency Designation
3. Sample Resolution

1111 Civic Drive, Suite 275 ● Walnut Creek, CA 94596 ● (925) 906-1801 ● FAX (925) 906-1805
E-Mail: authority@wastediversion.org ● Website: www.wastediversion.org

Comments & Questions Regarding Regional Agency Designation

Benefits of Regional Agency Designation:

1. ***Regional agency designation permits implementation and management of regional waste reduction and recycling programs***. The CCCSWA has historically implemented and managed all waste reduction and recycling programs on a regional basis. This means that all member jurisdictions have the same programs serving their communities.

2. ***Regional agency designation permits the CCCSWA to submit just one diversion report for the whole region.*** Creating one diversion report per year instead of five will save a significant amount of staff time. Reporting diversion as a region also more directly reflects the CCCSWA regional approach to franchising, implementing and managing waste reduction and recycling programs.

3. ***Regional Agency designation permits averaging diversion rates***. Members of a JPA with regional agency designation can benefit from the "averaging" of individual member diversion rates. Averaging member jurisdiction diversion rates create a more accurate regional rate reduce the effects of errors from potential disposal misallocations.

4. ***CIWMB staff places greater accuracy in regional diversion rates as compared to individual jurisdiction rates.*** CIWMB staff and Board favor the regional agency approach. A regional diversion rate covers a larger geographic area. Any inaccuracies that might exist within this larger area, such as those that might result from disposal misallocation, or large, temporary waste events such as storms or large construction projects are reduced.

5. ***Staff will continue to record and monitor individual jurisdiction disposal and program performance.*** Staff will continue to record and monitor individual jurisdiction disposal amounts and program performance to allow identification of local trends and provide staff the date to focus on regional or local programs as appropriate.

Possible Concerns Relating to Regional Agency Designation:

1. ***Will member jurisdictions who have met or exceeded the 50% requirement be impacted by under performing cities?*** All of the cities within CCCSWA have the same collectors and basic diversion programs. Hence significant discrepancies in diversion rates between participating cities should not occur. As long as the majority of cities meet the diversion requirements, the impact of an underperforming city in any given year will be minimized. In four of the last five years, three or more cities exceeded the 50% requirement. A city that underperforms one year and is assisted by regional averaging may perform well the next year, thus helping to improve the regional average in that year. Certain contemplated commercial diversion programs may be focused on commercial centers and restaurants, but would equally benefit all agencies under the regional reporting approach.

2. ***Will member jurisdictions get fined by the CIWMB if the regional diversion rate drops below the 50% requirement due to underperforming cities?*** A fine is very unlikely. The "Good Faith Effort" component of AB 939 provides that any jurisdiction that fully implements programs named in their Source Reduction & Recycling Element (SRRE) and demonstrates a good faith effort in implementation and management of their programs, will not be fined. CCCSWA operating as a regional agency will be tasked to insure all participating member agencies fully

implement their SRREs. Since the 50% diversion requirement of AB 939 was established in 2000, no city or county has been fined the $10,000 per day penalty established in the statute. Although three cities in southern California have had to pay lesser fines, these jurisdictions wholly ignored AB 939 diversion requirements and follow-on compliance orders issued by the CIWMB. If for some reason the CIWMB were to change its policy and fine CCCSWA, the Addendum establishing regional agency designation for the JPA has a method for allocating any penalty that could result from not meeting the requirements of AB 939.

ADDENDUM NO. 1
REGIONAL AGENCY DESIGNATION

PREAMBLE

The CCCSWA will save time and money by reporting disposal and diversion quantities to the CIWMB as a single regional agency, instead of as multiple independent agencies. There may also be other activities the CCCSWA can undertake on behalf of multiple members at once, such as administering Source Reduction and Recycling Elements (SRREs), that will increase efficiency. Therefore, it is the intent of the Central Contra Costa Solid Waste Authority ("CCCSWA") to formally undertake the responsibilities for reporting and implementing SRREs as required of its members by AB 939. As CCCSWA is an existing and operating joint powers agency pursuant to Government Code Sections 6500 *et seq.*, CCCSWA intends by amending its existing joint powers agreement (Third Amended Joint Exercise of Powers Agreement, dated July 22, 1999) through adoption of this Addendum, to obtain regional agency designation from the CIWMB and to perform the activities of a regional agency for those CCCSWA members seeking to participate, without the need for creation of a new, separate legal entity. CCCSWA members who wish to participate in the regional agency activities are designated in this document as "participating members."

1. **Purpose of Addendum**: This Addendum to the Third Amended Joint Exercise of Powers Agreement (JPA) is made for the purpose of allowing CCCSWA to jointly report disposal and diversion quantities pursuant to California Public Resources Code ("PRC") Sections 40970 through 40975. These statutory provisions allow cities and counties to form "regional agencies" to implement PRC Division 30, Part 2 Integrated Waste Management Plans, to reduce the cost of reporting and tracking of disposal and diversion programs by individual cities and counties and to increase the diversion of solid waste from disposal facilities. Upon adoption of this Addendum, the CCCSWA will be able to combine disposal and diversion quantities of all the participating members for determining compliance with AB 939. The purposes of reporting as a regional agency are in harmony with the purposes of the CCCSWA as described in Article 1.B. of the JPA and shall be included therein.

2. **Members, Name and Address**: The initial participating members are the cities and towns of Danville, Lafayette, Moraga, Orinda and Walnut Creek. (PRC § 40975(b)(1).) Any city or town that later joins the CCCSWA may elect to become a participating member as well. Membership in the CCCSWA does not require a city or town to be a participating member.

Contra Costa County is a member of CCCSWA. Contra Costa County must report for the entire county-wide area for AB 939 purposes. Portions of the unincorporated County area are within the jurisdictional boundaries of CCCSWA and others are not. For these reasons Contra Costa County will not be a participating member at this time.

When it receives regional agency designation, the joint powers agency will keep its same name, that is, the Central Contra Costa Solid Waste Authority, or CCCSWA. The administrative offices are currently located at 1111 Civic Drive, Suite 275, Walnut Creek, CA 94596.

3. **Allocation of Expenses**: The CCCSWA does not anticipate that there will be any additional expenses associated with regional agency designation, as the CCCSWA currently provides similar services on a member by member basis. Should regional agency activities incur any additional expenses not providing benefit to all CCCSWA members, the participating members will share the costs equitably. The CCCSWA shall develop a method for fairly allocating any expenses involved in administering regional agency activities. Such activities may be treated as a project subject to Article 4, Section C of the JPA. Any activity that requires a special or otherwise additional expenditure shall be listed in the budget of CCCSWA as required by Article 3, Section K of the JPA.

4. **Reporting**: The total tonnage of waste diverted from disposal, and the total tonnage of waste delivered to permitted disposal facilities for all participating members, shall be determined and reported as attributable to the region as a whole.

5. **Source Reduction, Recycling, and Composting Programs to be Implemented by the CCCSWA**: The CCCSWA will be responsible for the local adoption process for the Source Reduction and Recycling Element (SRRE) and any other planning elements for participating members. The CCCSWA also has the primary responsibility for implementation of the source reduction, recycling and composting programs detailed in the participating members' SRREs, as prepared and submitted in July 1992 and any subsequent amendments for member agencies.

6. **Duties and Responsibilities of Each Participating Member**: Each participating member will, pursuant to existing resolutions to delegate franchising authority, continue to participate in CCCSWA's joint franchise and other activities consistent with its SRRE. If a currently participating member wishes to pursue separate and independent franchising, or if a new member joins the CCCSWA and elects not to be a part of the joint franchise, then that member will be required to enter into a separate written arrangement with CCCSWA to provide sufficient authority to CCCSWA to insure compliance with its SRRE.

7. **Civil Penalties**: If a participating member fails to meet the requirements imposed by AB 939 and such failure results in the imposition by the CIWMB of civil or criminal penalties, fines, forfeitures or expenditures of any nature, and the CIWMB determines that one or more specific members are at fault, then the member(s) at fault shall pay the civil or criminal penalty, fine, forfeiture, or expenditure of any nature to the extent that such member's action caused the violation resulting in the imposition of such civil or criminal penalty, fine, forfeiture or expenditure of any kind. If the CIWMB determines that the CCCSWA as a whole is at fault, or does not determine which of its members are at fault, each participating member shall be apportioned a share of such civil or criminal penalty, fine, forfeiture, or expenditure of any kind, in direct proportion to its population, using current year population estimates from the State Department of Finance.

8. **Approval of Agreement by the CIWMB Required**: CCCSWA regional agency designation is subject to the approval of the CIWMB. (PRC § 40975(a).)

9. **Terms of Agreement and Amendments**: This Addendum will become effective on a two-thirds vote of all members of the CCCSWA Board and shall continue until amended. Pursuant to JPA Article 4, Section B, the JPA and this Addendum may be amended by a two-thirds vote of all members of the CCCSWA Board. Any such amendment shall be effective upon the date of the action.

10. **Withdrawal**: Any participating member may withdraw from participation in regional agency activities by filing a written notice with the CCCSWA. Written notice of withdrawal must be tendered by July 1 of any calendar year, and will become effective January 1 of the following calendar year. A member who has withdrawn shall have responsibility for implementing its SRRE, and shall agree to cooperate fully with the CCCSWA in implementation of then existing programs. Withdrawal from this Addendum and regional agency activities does not automatically cause withdrawal from the CCCSWA; members wishing to withdraw from the CCCSWA must comply with Article 4, Section D of the JPA.

11. **Contingency Plan**: In the event that all participating members withdraw or the CCCSWA permanently discontinues regional agency activities, the CCCSWA members shall continue to remain part of the franchise, to have responsibility for implementing the CCCSWA's SRRE until they obtain their own SRREs, and to cooperate regarding any other integrated waste management programs pursuant to the JPA.

1162026.3

RESOLUTION OF THE CITY COUNCIL OF _____ DIRECTING THE CITY'S REPRESENTATIVE ON THE CENTRAL CONTRA COSTA SOLID WASTE AUTHORITY BOARD TO COMMIT THE CITY TO JOINING A REGIONAL AGENCY

WHEREAS, the City is a member of the Central Contra Costa Solid Waste Authority (CCCSWA); and

WHEREAS, the CCCSWA plans to form a regional agency pursuant to Public Resources Code sections 40970-40975 in order to facilitate AB 939 reporting and SRRE implementation; and

WHEREAS, the creation of a regional agency allows the agency to report its members' disposal and diversion quantities together in a single report, and thus reduces the time and expense of creating multiple reports; and

WHEREAS, the fact that all CCCSWA member agencies use the same solid waste franchisee makes the creation of a single disposal and diversion report logical and relatively easy; and

WHEREAS, the creation of a regional agency may also facilitate the implementation of other shared programs in the future, and may have additional benefits the precise details of which are unknown at this time; and

WHEREAS, the California Integrated Waste Management Board favors the creation of regional agencies; and

WHEREAS, the California Integrated Waste Management Board has advised that in order to form the regional agency CCCSWA should amend its Joint Exercise of Powers Agreement by a Board vote, and that it should receive approval by each member city; and

WHEREAS, the City finds that it will be benefitted by joining the regional agency; and

WHEREAS, the City wishes to join the regional agency; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of _____ that the City hereby seeks to become a member of the regional agency and directs its representative on the CCCSWA Board to vote in favor of the amendment to the Joint Exercise of Powers Agreement that will create the regional agency, or to otherwise commit the City to joining the regional agency.

PASSED AND ADOPTED AT A MEETING OF THE CITY COUNCIL OF THE CITY OF ____ ON THE _____ DAY OF ____, 2008 BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST:

_____ _____

City Clerk Mayor

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